

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	CRIMINAL ACTION NUMBERS
)	
v.)	IN-95-11-1323 IN-95-11-1324
)	IN-95-11-1325 IN-95-12-0684
MICHAEL R. MANLEY)	IN-95-12-0685 IN-95-12-0686
)	
Defendant)	ID No. 9511007022

Submitted: July 14, 2010
Decided: November 28, 2011

MEMORANDUM OPINION

*Defendant Manley's Motion to Permit Juror Interviews - **DENIED***

Appearances:

Elizabeth R. McFarlan, Esquire, and Gregory E. Smith, Esquire, Deputy Attorneys General, Attorneys for the State of Delaware

Christopher D. Tease, Esquire, and Christopher S. Koyste, Esquire, of Wilmington, Delaware, and Anne L. Saunders, Esquire, and Beth Ann Muhlhauser, Esquire, of Harrisburg, Pennsylvania, Attorneys for Defendant Michael Manley

HERLIHY, Judge

Defendant Michael Manley has moved for an order to permit him to question jurors in connection with Claims VIII and XII which are part of his twenty-right claims for postconviction relief in his Amended Motion.¹ Claim XII relates to an allegation of juror prejudice arising out of his 1996 trial when prospective jurors on the first day of selection saw him in prison clothing. On each day of selection thereafter, however, and during the entire trial he was in civilian clothing. The Court has determined that this 1996 claim is procedurally barred. The motion to interview is moot, therefore, as to that claim.

The remaining claim for which Manley seeks permission to interview jurors derives from his Claim VIII. That claim is the failure of his 2005 trial counsel to ask the Court for some *voir dire* to ferret out racial bias in prospective jurors. This would have been accomplished by telling each juror the victim was white and the defendants were black and whether those facts would make a difference in that juror's evaluation of the evidence and law and possible penalty. While not necessarily the precise question or questions, the purpose would be to insure that no such racial bias would play any role in that person's role and duty as a juror.

As this Court noted in its separate opinion reviewing Claim VIII. Manley's counsel did not ask the Court to pursue any *voir dire* along this line. The record needs further development, as also noted in that review. In the near future, the Court will be conducting

¹ While the original motion and response were filed in 2008, long before the date for the evidentiary hearing was set, only with the pendency of the November 28, 2011 evidentiary hearing did it become necessary to address this motion.

an evidentiary hearing on this and other issues Manley raises. The Court sees a need to approach resolution of Claim VIII, in a careful, staged manner. Manley's 2005 trial counsel will be testifying at that hearing and can be questioned why they did not seek *voir dire* along these lines (nor did Stevenson's counsel for that matter; and there may or may not have been a discussion among counsel for both co-defendants about this matter prior to jury selection).

The Court, until it hears from 2005 counsel for Manley and Stevenson (who also has an upcoming evidentiary hearing), will defer consideration of the issue of questioning the 2005 jurors.

In *State v. Cabrera*,² this Court reviewed the Delaware case law on post-trial juror interviews. It was, to say the least, a mixed bag of Supreme Court decisions about who may interview jurors, etc., and what a defendant must show to obtain interviews.³ In *Cabrera* this Court said the interviewing of jurors, if done, must be done by a judge or judicially supervised.⁴

Whatever confusion existed in Supreme Court jurisprudence, noted in *Cabrera* about examination of jurors post-trial, was clarified in *Knox v. State*.⁵ If there are juror

² 984 A.2d 149 (Del. Super. 2008).

³ *Id.* at 173.

⁴ *Id.* at 169-170.

⁵ 29 A.3d 217 (Del. 2011).

interviews, they are to be done by a judge. Whether there will be juror interviews in this case must wait the conclusion of the Manley and Stevenson evidentiary hearings. Since Manley's motion is to permit *him* to interview jurors it must be denied based on *Cabrera* and *Knox*.

Conclusion

For the reasons stated herein, defendant Michael Manley's motion to permit to interview jurors is **DENIED**.

IT IS SO ORDERED.

J.